

PATENT
IBM Docket No. BLD920000041US1

REMARKS

Applicants respectfully request that this supplemental reply be entered and considered in conjunction with the Amendment (B) filed September 9, 2004 and before the next Official Action.

Applicants are aware that the 35 USC 102 (e) priority date availed to a reference is, generally speaking, the earliest U.S. filing date for which a benefit is properly sought via sections 119 (e) and/or 120; "properly sought" being a criteria which relates to whether the claims in the child have 35 USC 112 paragraph 1 support in the parent application.

Applicants call to question the propriety of the primary reference, U.S. Patent Application Publication US 2001/0013894A1 to Parulski (hereinafter "Parulski"), applied by the Examiner in rejecting claims 6 through 38. Parulski has a filing date of March 6, 2001, which on its face is defective because it was filed after Applicants filing date in the year 2000. Presumably, the Examiner is relying on the parent which has a filing date in 1997.

However, since Parulski is a continuation-in-part application, Parulski may be defective as prior art. Please see MPEP chapter 2136.03 subsection IV entitled *PARENT'S FILING DATE WHEN REFERENCE IS A CONTINUATION-IN-PART OF THE PARENT*. The issue is:

For if a patent could not theoretically have issued the day the application was filed, it is not entitled to be used against another as 'secret prior art.' [emphasis original]

In re Wertheim, 646 F.2d 527, 537, 209 USPQ 554, 564 (CCPA 1981)

Accordingly, if the claims in Parulski are not supported by the parent according to 35 USC 112, first paragraph, then Parulski is defective and Applicants respectfully request that the Examiner withdraw the Parulski reference, should that be the case. Since Applicants do not have access to the parent application at the present time, due

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to the provisions of 35 USC 122, Applicants can only assert that the parent does not support the claims in Parulski and shift the burden onto the Examiner to make a showing on the record for section 112 paragraph 1 support for the claims in Parulski.

It is reasonable that 112 paragraph 1 support does not exist in the parent for the claims in Parulski because it is typical for new matter to be added in order to support new claims. New matter is otherwise not added.

Applicants respectfully assert that if such a showing is not properly made, the Parulski reference should be withdrawn and claims 6-38 should be passed to issuance.

The Examiner is invited to contact the undersigned for all issues of this Application at the telephone number and/or email address indicated below, particularly for matters that may be timely handled.

Respectfully Submitted,



Carlos Munoz-Bustamante

Reg. No. 51,349

IBM Corporation
Personal and Printing Systems Group
Intellectual Property Law
Department 9CCA/Building 002-2
P. O. Box 12195
Research Triangle Park, NC 27709

(919)254-2587
FAX: 919-254-2649
EMAIL: cbustama@us.ibm.com